

REMARKS

The amendments and remarks presented above are believed to place the application in better condition for allowance or appeal. Accordingly Applicants request entry of this paper into the application, pursuant to 37 CFR § 1.116(b).

I. Status of the Claims

Claims 8-13 are currently pending, with claims 11-13 withdrawn from consideration as directed to a non-elected invention. Upon entry of this amendment, claim 8 is amended and claims 9-13 canceled without prejudice or disclaimer. Applicants reserve the right to reintroduce the unamended or canceled claims in this or another application.

The new claims that are introduced (i.e., claims 16-20) are independent claims based on canceled claim 10. Whereas claim 10 referred to SEQ ID NOs: 6, 8, 10, 12, and 14 in the alternative, the new claims refer to each of these sequences independently. The Examiner has indicated that claims covering this subject matter is allowable.

II. Claim Rejections under 35 U.S.C. §112

Claims 8-9 stand rejected because the specification is said not to adequately describe nor enable the genus of polypeptides having greater than 95% amino acid sequence identity to SEQ ID NO:2 that have ATPase or actin binding activity.

Although Applicants do not agree with this conclusion, it is noted that the claims have been amended to recite to isolated human smooth muscle myosin heavy chain polypeptides, wherein the polypeptide comprises the amino acid sequence of SEQ ID NO:2, 6, 8, 10, 12 or 14, and has ATPase activity or actin binding activity. Under the Written Description Guidelines (Fed. Reg., vol. 66, page 1106, January 5, 2001), the written description requirement can be satisfied in various ways, including: 1) actual reduction to practice, 2) reduction to drawings, or 3) disclosure of relevant identifying characteristics. This latter option can be achieved by: (a) disclosing structures or other chemical or physical properties, (b) functional characteristics coupled with a known or disclosed correlation between structure and function, or (c) combinations of such identifying characteristics. These claims clearly satisfy the written

description requirement because they define the claimed polypeptides by both sequence and function, thereby satisfying criterion 3(c) above.

The primary assertion expressed in the Office Action with respect to the enablement rejection is that the specification does not provide sufficient guidance with respect to which amino acids can be modified without adversely affecting the activity of a polypeptide having SEQ ID NO:2. Applicant submit that one of ordinary skill in the art could readily make and use the currently claimed polypeptides in view of the sequence and functional elements recited in the claims.

For all these reasons, it is thus requested that the written description and enablement rejections be withdrawn.

III Claim Rejections under 35 U.S.C. §102

Claims 8 and 9 are said to be anticipated under 35 U.S.C. 102 by GenPept Accession No. P35749 and GenBank Accession No. AB020673. In response, Applicants note that neither reference teaches or describes polypeptides as currently claimed, namely polypeptides that comprise SEQ ID NO:2, 6, 8, 10, 12 or 14. It is accordingly requested that this rejection be withdrawn.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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